

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2006-0455, State of New Hampshire v. Stephen Deschenes, the court on September 19, 2007, issued the following order:**

The defendant appeals his convictions for aggravated felonious sexual assault and sexual assault. He argues that the trial court erred in: (1) admitting his prior assault convictions to impeach his credibility; (2) barring him from cross-examining the complainant about a prior incident bearing on her character for truthfulness or untruthfulness; (3) allowing a non-expert witness to testify about the frequency of observable physical injury to the genitalia of rape victims; and (4) attributing 365 days of pre-trial confinement credit to his misdemeanor term. We reverse and remand.

Absent an unsustainable exercise of discretion, we will affirm the decision of a trial court on the admission of evidence. State v. Wall, 154 N.H. 237, 242-43 (2006).

The defendant challenges the admission for impeachment purposes of his convictions for assault and battery, arguing that the trial court erred in determining that the probative value of admitting that evidence outweighed its prejudicial effect to the defendant. See N.H. R. Ev. 609(a). We disagree. It was within the trial court's discretion to find that the convictions demonstrated the defendant's abiding and repeated contempt for the law and that they were sufficiently different from the charged crimes to ensure that the defendant would not be unduly prejudiced. See State v. Demeritt, 148 N.H. 435, 442 (2002); State v. Beltran, 153 N.H. 643, 649 (2006).

The defendant next challenges the trial court's ruling barring him from cross-examining the complainant about an incident in which she allegedly made a false report to the police. See N.H. R. Ev. 608(b). While cross-examination is subject to limitation at the discretion of the trial judge, the defendant may not be denied the opportunity to make at least a threshold level of inquiry on a proper matter of inquiry. See State v. Allison, 134 N.H. 550, 558 (1991). We agree with the defendant that evidence that the complainant either lied to the police or planned to do so would have been powerful evidence probative of her truthfulness or untruthfulness, and the trial court's refusal to permit cross-examination was an unsustainable exercise of its discretion. We are not persuaded by the State's contention that any error was harmless beyond a reasonable doubt. Accordingly, we reverse and remand.

The defendant next argues that the trial court erred by allowing a non-expert witness to testify about the frequency of observable physical injury to the genitalia of rape victims. The State does not defend the ruling below, but instead argues solely that any error in admitting the testimony was harmless. In light of our ruling above, we need not decide whether the admission of this testimony constituted harmless error.

Finally, the defendant argues that the trial court erred by attributing 365 days of pre-trial confinement credit to his misdemeanor term. The State concedes that this was error. See State v. Edson, 153 N.H. 45, 48-50 (2005). Accordingly, and in light of our ruling above, we need not address this issue further.

Reversed and remanded.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**